

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DINO CONSTANCE,

Petitioner,

v.

DONALD HOLBROOK,

Defendant.

No. 3:15-cv-05426-RAJ

ORDER

**I. INTRODUCTION**

This matter comes before the Court on three motions filed by Petitioner Dino Constance (“Petitioner”). First, Petitioner filed a motion for an indefinite extension to file a motion for reconsideration on the Court’s Order Denying Petitioner’s Motion to Appoint Counsel. Dkt. # 103. Petitioner also “request[ed] a second appointment of counsel to file a civil suit against [a prison official]” and his prison facility for violating his right to access the courts. Dkt. # 103. *Id.* at 2. Five days later, Petitioner filed a supplement to his motion, noting that the “primary purpose [of his prior motion] was to request a stay in the previous matter,” as opposed to a request for appointment for counsel. Dkt. # 104. Several days later, Petitioner filed a motion in which he requested a

1 30-day extension in place of his request for an indefinite extension to file a motion for  
2 reconsideration. Dkt. # 105. He also “renew[ed] [his] secondary request for appointment  
3 of counsel to sue DOC/CRCC for interference with access to the courts.” *Id.* at 1.  
4 Petitioner further moved the Court to enter an order compelling staff at the prison who  
5 are in possession of his typewriter to return it immediately. *Id.* The Court will consider  
6 each request in turn.

## 7 **II. DISCUSSION**

8 On February 26, 2021, Petitioner, proceeding *pro se* while incarcerated, moved the  
9 Court for a 21-day extension to file a motion for reconsideration on the Court’s order,  
10 which was due on March 2, 2021, citing limited access to the law library due to COVID  
11 restrictions. Dkt. # 98. The Court granted the request and extended the deadline to  
12 March 25, 2021. Dkt. # 99. On March 22, 2021, Petitioner filed a motion seeking an  
13 additional 21-day extension based on his broken typewriter, upon which he depends for  
14 drafting his motion due to his injured right hand that precludes him from writing. Dkt.  
15 # 100 at 1. The Court granted the second request for an extension of time. Dkt. # 102.

### 16 **A. Extension of Time to File Motion for Reconsideration**

17 Petitioner’s pending request for an extension of 30 days is based on similar  
18 reasoning—his challenges in obtaining his typewriter, which he requires to draft motions  
19 due to his injury. A court may, for good cause, extend the time by which an act must be  
20 done if a request is made before the original time expires. Fed. R. Civ. P. 6(b).  
21 According to Local Rule 7(j), “[a] motion for relief from a deadline should, whenever  
22 possible, be filed sufficiently in advance of the deadline to allow the court to rule on the  
23 motion prior to the deadline,” unless the motion is based on a “true, unforeseen  
24 emergency.” Local Rules W.D. Wash. LCR 7(j). In the prior motion for an extension of  
25 time, Petitioner alleged that his right hand was injured, and he was therefore unable to  
26 write a lengthy motion by hand. Dkt. # 100 at 1. The Court found that Plaintiff provided  
27 good cause for an extension of time based on his inability to draft his motion by hand and

1 the confirmed breakdown of his typewriter. *See* Dkt. 100 at 2.

2 Petitioner now seeks an additional extension for 30 days due to challenges in  
3 getting the typewriter fixed again and then obtaining it from prison officials once it was  
4 returned to the prison facility. Dkt. # 105 at 1. Petitioner also cites limited law library  
5 access as a reason for an extension. *Id.* The Court recognizes the ongoing challenges  
6 associated with COVID-related restrictions and finds no reason to doubt Petitioner's  
7 allegations of delay in obtaining his typewriter. The Court also notes that Petitioner  
8 moved for an extension in advance of the deadline. *See* Dkt. # 103. The Court therefore  
9 **GRANTS** Petitioner's motion for an extension of time to 30 days from the date of this  
10 Order. Dkt. # 105.

11 **B. Request for Appointment of Counsel for Interference With Access to the Courts**  
12 **Claim**

13 Plaintiff also seeks to "renew" his "secondary request for appointment of counsel  
14 to sue [the Department of Corrections and his facility] for interference with access to the  
15 courts." Dkt. # 105 at 1. The Court reiterates the law on the appointment of counsel as  
16 provided in its prior order denying Petitioner's motion for appointment of counsel. Dkt.  
17 # 97. A plaintiff does not have a right to counsel in civil cases, including federal habeas  
18 petitions. *See Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981) (civil cases);  
19 *McCleskey v. Zant*, 499 U.S. 467, 495, 111 S. Ct. 1454, 1471, 113 L. Ed. 2d 517 (1991)  
20 (federal habeas cases). In federal habeas proceedings, a district court may appoint  
21 counsel to a financially eligible person when "the interests of justice so require." 18  
22 U.S.C. § 3006(A).

23 In certain cases, "exceptional circumstances" may warrant the appointment of  
24 counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1). *Agyeman v. Corrs.*  
25 *Corp. of Am.*, 390 F.3d 1101, 1103 (9th Cir. 2004). "A finding of exceptional  
26 circumstances requires an evaluation of both 'the likelihood of success on the merits and  
27 the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the

1 legal issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)  
2 (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must,  
3 however, plead facts that show he has an insufficient grasp of his case or the legal issue  
4 involved and an inadequate ability to articulate the factual basis of her claim. *Agyeman*,  
5 390 F.3d at 1103. Although most parties would benefit from representation by an  
6 attorney, that is not the standard for appointment of counsel in a civil case. *See Rand v.*  
7 *Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other grounds*, 154 F. 3d 952  
8 (9th Cir. 1998) (finding that a *pro se* litigant may be better served with the assistance of  
9 counsel is not the test). A plaintiff must show exceptional circumstances.

10 Here, Petitioner moves the Court to appoint counsel to file a new claim against the  
11 Department of Corrections and his own prison facility “for interference with access to the  
12 courts.” Dkt. # 105 at 1. Similar to his prior request for appointment of counsel related  
13 to his federal habeas petition, Petitioner has not demonstrated exceptional circumstances  
14 that warrant appointment of counsel. Nor has he provided any compelling arguments to  
15 suggest his claim is likely to succeed on the merits beyond asserting that prison staff  
16 “simply must learn some respect for the court’s timelines and inmates’ deadlines or  
17 problems like this will never end.” *Id.* Moreover, such a claim is not particularly  
18 complex. Petitioner’s *pro se* filings have shown that he has sufficient ability to articulate  
19 legal arguments. The Court finds no reason why he is unable to articulate a claim against  
20 prison officials for failing to timely provide him with his typewriter. For these reasons,  
21 the Court **DENIES** his request for counsel on this claim. *Id.*

### 22 **C. Request for Order Compelling Return of Property**

23 Petitioner requests that the Court issue an order compelling prison staff who are in  
24 possession of his typewriter to return it to him immediately. Dkt. # 105 at 1. In the April  
25 19, 2021 motion, Petitioner indicated that the typewriter was fixed and picked up by  
26 prison officials three days earlier on April 16, 2021. The Court expects that the  
27 typewriter is now in the possession of Petitioner. Having granted Petitioner a 30-day

1 extension in which to file his motion for reconsideration, the Court **DENIES** Petitioner's  
2 request for an order compelling the return of his typewriter as moot. *Id.* Having  
3 considered all of Petitioner's challenges, the Court expects that Petitioner should have no  
4 further difficulties in filing a motion, if he chooses to do so, within the 30-day deadline.

### 5 **III. CONCLUSION**

6 For the foregoing reasons, the Court **ORDERS** the following:

7 1) Petitioner's request for an extension of time to 30 days from the date of this  
8 Order to file a motion for reconsideration on the Court's Order Denying  
9 Petitioner's Motion to Appoint Counsel, Dkt. # 105, is **GRANTED**;

10 2) Petitioner's request for appointment of counsel to file an action based on  
interference with access to the courts, Dkt. # 105, is **DENIED**; and

11 3) Petitioner's request for an order compelling a return of property, Dkt. # 105, is  
12 **DENIED** as moot.

13  
14 DATED this 28th day of April, 2021.

15   
16

17 The Honorable Richard A. Jones  
18 United States District Judge  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28